MST

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3598 OF 2007

Chandrashekhar Arjun Pillai & anr. Petitioners
versus
Hiraman Omkar Chaudhary Respondent

Mr.Rajesh S. Datar for petitioners.
Mr.P.M.Kokashi for respondent.

CORAM : A.M.KHANWILKAR, J.

DATE : 06th August 2007

PC :

1. Heard counsel for the parties. Rule. Rule made returnable forthwith by consent.

2. This petition takes exception to the judgment and order passed by the Second Joint Civil Judge, Senior Division, Thane dated 14th March 2007 below Exhibit-15 in Miscellaneous Application No.93 of 2005. The said application was filed by the petitioner-decree holder praying that the opponent/obstructionist be directed to adduce his oral as well as documentary evidence first if any to substantiate his right, title and interest. The application, however, came to be rejected by

MST

the Executing Court by the impugned judgment and order relying on the dictum of our High Court in case of Mani Nariman Daruwala and others Vs. Phiroz M. Bhatena and others reported in AIR-1991-Bom-328.

3. In my opinion, the Executing Court has misapplied the ratio of the judgment to the point in issue. In the present case the question that was required to be considered by the Executing Court to decide the application of the petitioner was whether the respondent- obstructionist ought to prove oral and documentary evidence to substantiate his right, title and interest in relation to the suit property. That was not the issue considered in the reported judgment. The reported judgment no doubt deals with the case in execution proceedings and has taken a view that the decree holder will have to establish that the decree is a valid decree for possession. That question, however, will arise only at the hearing of the execution application. For the present, the question that was required to be considered by the Executing Court would be whether the respondent ought to adduce oral and documentary evidence to establish his right, title and interest in the suit property? Insofar as that

MST

question is concerned, the reported decision is of no avail.

4. In my opinion, considering the nature of dispute and in the interest of justice, the obstructionist should first establish his right, title and interest in the suit property. Only then he can be heard to resist the execution of the decree on the argument that the decree is not a valid decree. In a converse situation, without establishing the right, title and interest in the suit property, the obstructionist will get away on the technical argument of validity of the decree for possession. That cannot be countenanced.

5. Accordingly, the impugned judgment and order is set aside. Instead, the application preferred by the petitioner Exhibit-15 is made absolute. The Executing Court will proceed with the execution application in accordance with law on the basis of the observations made in this order. Petition is disposed of in the above terms.

(A.M.KHANWILKAR, J.)